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U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Eleventh Congress

February 9, 2009

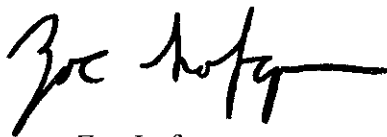
Dr. Erik Camayd-Freixas
Professor of Modern Languages
Florida International University
5453 SW 115th Street
Miami, FL 33196

Dear Dr. Camayd:

Thank you for your recent appearance before the Committee on the Judiciary's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. Your testimony was insightful and will assist the Subcommittee as it moves forward.

Enclosed you will find a **verbatim** transcript of the hearing enclosed for your review. Please deliver any changes to the attention of Andres Jimenez of the Subcommittee on Immigration, Citizenship, Border Security, and International Law, 517 Cannon House Office Building, Washington, DC, 20515 no later than February 16, 2009. If you have any further questions or concerns, please contact Andres Jimenez at (202) 225-3926.

Sincerely,



Zoe Lofgren
Chairwoman

Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International
Law

2793 STATEMENTS OF MR. ERIK CAMAYD-FREIXAS, PROFESSOR OF MODERN
2794 LANGUAGES, FLORIDA INTERNATIONAL UNIVERSITY; MR. DAVID
2795 LEOPOLD, DAVID WOLFE LEOPOLD AND ASSOCIATES, ON BEHALF OF
2796 AMERICAN IMMIGRATION LAWYERS ASSOCIATION; MR. ROBERT R. RIGG,
2797 ASSOCIATE PROFESSOR OF LAW AND DIRECTOR OF THE CRIMINAL
2798 DEFENSE PROGRAM, DRAKE UNIVERSITY LAW SCHOOL; MRS. LORA
2799 COSTNER

2800 STATEMENT OF ERIK CAMAYD-FREIXAS

2801 Mr. CAMAYD-FREIXAS. Thank you, Chairwoman Lofgren.

2802 Ms. LOFGREN. We need the microphone on, though.

2803 Mr. CAMAYD-FREIXAS. Thank you, Chairwoman Lofgren,
2804 Ranking Member King, honorable members of the subcommittee.

2805 I was 1 of 16 interpreters who served both weeks of the
2806 Postville hearing. Unlike judges, prosecutors or attorney, I
2807 was present at every step of the process. It is my duty as
2808 an impartial expert witness, an officer of the court, to
2809 ensure that the court is not misled and to bring to its
2810 attention any impediments to due process. I have done so in
2811 the best interest of the federal court I am proud to serve
2812 and with the conviction that, if our honorable judges had
2813 known how this judicial experiment would turn out, they would
2814 have never allowed it.

2815 In my statement submitted for congressional record, I

2816 document the flaws. Detainees' quarters were not certified.
2817 The court failed to maintain physical and operational
2818 independence from ICE prosecution and a level playing field
2819 for the defense.

2820 There was inadequate access to counsel, no meaningful
2821 presumption of innocence. Defendants appear not to
2822 understand their rights and charges. Bail hearings and other
2823 due process rights were denied. The charge of identity theft
2824 used to force a plea lacked foundation and was never tested
2825 for probable cause.

2826 Defendant did not know what a social security number was
2827 and were not guilty of intent crime. Guilty pleas were
2828 obtained under duress. Judges had no sentencing discretion
2829 pursuant to a binding plea agreement. Sole providers whose
2830 families are in jeopardy now endure a cruel and unusual
2831 psychological punishment, the foreseeable effect of a prison
2832 time on common--

2833 Abridgement of process produced wholesaling justice at
2834 the other end. Parents begging to be deported put in jail at
2835 public expense. Proud working mothers branded like cattle
2836 with the scarlet letter of an ankle monitor dehumanized and
2837 reduced to begging at the doors of the church as they were
2838 released on humanitarian grounds.

2839 The town of Postville devastated. The kinship ties are
2840 noble people are quick to forge with all newcomers painfully

2841 severed. Families and friends separated.

2842 I saw the Bill of Rights denied and democratic values
2843 threatened by the breakdown of checks and balances, and it
2844 all appeared to be within the framework of the law pursuant
2845 to a broken immigration system.

2846 Postville lays bare a grave distortion in the legal
2847 structure of government. Post 9-11, ICE was granted power to
2848 wage the war on terror, but since 2006, it has diverted
2849 resources even from disaster relief to an escalating and
2850 unauthorized war on immigration.

2851 Yet the men and women of ICE are not to be faulted for
2852 doing their duty. It is unrealistic in our adversarial
2853 system to ask prosecutors to exercise restraint and not use
2854 all legal mean to win convictions. The fact is our laws have
2855 not kept up with this growth in enforcement.

2856 Congress failed to pass immigration reform, and ICE has
2857 filled the legal void with its own version of it. Now we
2858 have a serious contradiction, the growth of authoritarian
2859 rule inside a democratic government. This entity can
2860 simultaneously wield immigration and criminal codes plus
2861 issue administrative rules, leaving no room for
2862 constitutional guarantees.

2863 It co-ops other branches of government--social security,
2864 U.S. Attorney, federal court--and uses appropriations to
2865 recruit local police for immigration enforcement, setting

2866 neighbor against neighbor and dangerously dividing the
2867 nation.

2868 With the help of local sheriffs, Postville repeats
2869 itself daily while the harshness of border enforcement is
2870 reenacted in the American Heartland with great collateral
2871 damage to our citizens and community. It is a rush to raid
2872 as much as possible before Congress regains the vision and
2873 courage to restore the law of the land.

2874 Part of immigration reform is redefining jurisdiction
2875 over--ICE jurisdiction over immigration and criminal matters
2876 without impairing the agency's ability to defend us from
2877 terrorist threats. Since 2006, families have been separated
2878 on a scale unseen in the Americas since the Spanish Conquest,
2879 when it led to the extinction of Ameri-Indian nations. In
2880 Postville, we have the added moral burden posed by the
2881 presence of ethnic Mayan, testimonial people who constitute
2882 and endanger patrimony of humanity.

2883 I bring to this forum three requests from the people of
2884 Postville.

2885 First, our government has left a humanitarian crisis for
2886 Sister Mary McCauley and her good neighbors to cure. I call
2887 on all to contribute to St. Bridget's Church and on the
2888 federal government to respond with aid that guarantees
2889 survival for their schools, businesses and institutions. It
2890 is time for America to adopt Postville.

2891 Second, with regard to the imprisoned aliens, government
2892 says they have 300 criminals. The people say, "Show us one
2893 victim of their crime or send them home."

2894 Third, our national unity requires that Congress pass
2895 not only comprehensive but compassionate immigration reform
2896 as would befit the dignity of this great country built upon
2897 the shoulders of immigrants by their children.

2898 Thank you.

2899 [The statement of Mr. Camayd-Freixas follows:]

2900 ***** INSERT *****

3171 Ms. LOFGREN. Mrs. Costner, thank you for your
3172 testimony.

3173 We are going to recess this hearing now. We have a
3174 series of votes, and we will not be back before 3:15. So go
3175 get a cup of coffee, and we will ask some questions when we
3176 return.

3177 [Recess.]

3178 Ms. LOFGREN. The subcommittee will reconvene.
3179 Hopefully, the ranking member will be here shortly.

3180 First, apologies. We thought that we would be back
3181 at--by 3:15, but we had more votes than we had anticipated,
3182 and we appreciate your patience and your willingness to stick
3183 with us on this.

3184 We have just a couple of questions that we will be able
3185 to pose to all of you.

3186 But before I do, let me just say to you, Mrs. Costner,
3187 what happened to you was really terrible and outrageous, and
3188 I don't think there is a person in the Congress who would
3189 defend what happened to you, and I appreciate that you were
3190 willing to come here and share your story. The individual
3191 that did that to you should have been prosecuted, and I think
3192 it is--you know, I don't see U.S. Attorneys are here now. I
3193 don't understand why they didn't do their job to protect you
3194 and your family, and I just wanted to say that before getting
3195 into the legal questions for the others.

3196 Let me ask you, Dr. Camayd, you have been a translator
3197 for a long time, and I read the statement that you made that
3198 was available publicly after this raid, and I was struck by,
3199 in your statement, how shocked you seemed to be by the
3200 procedures that you encountered here and that it was your
3201 judgment that these individuals had no idea what was going
3202 on.

3203 And you are, of course, the interpreter so you were in
3204 kind of the catbird seat to understand what people knew
3205 perhaps even better the lawyers because they couldn't
3206 actually talk directly to the defendants.

3207 Have you ever seen anything like this before in your 23
3208 years as a interpreter?

3209 Mr. CAMAYD-FREIXAS. Never.

3210 Ms. LOFGREN. I think that is quite revealing.

3211 In your judgment, did these defendants understand the
3212 nature of these proceedings and the pleas that were--there
3213 was a lot of representation that the defense counsel had
3214 advised them and they knew all the immigration issues. Did
3215 you observe that?

3216 Mr. CAMAYD-FREIXAS. Well, there were almost 300
3217 individuals, and the level of understanding was different
3218 from one to the other. My determination is that the majority
3219 of them did not understand the charges or the rights that
3220 they were waiving. And I base that on several factors.

3221 First, it is unclear to what extent the numerous ethnic
3222 Mayans understood Spanish as a second language. Then there
3223 are vast cultural differences between Mexicans and Guatemalan
3224 rural cultures on the one hand and American legal culture on
3225 the other.

3226 And the most important factor is that, in my expert
3227 opinion as an educator, due to their lack of schooling and
3228 low rate of literacy, most of the defendants had a level of
3229 conceptual or abstract understanding equivalent to that of a
3230 third grader or less. So they clearly needed a lot more
3231 time, a lot more educating on a one-to-one basis on the part
3232 of the defense attorney to even come closer to understand
3233 what these things meant.

3234 In addition to that, they really were tuning it all out
3235 because the only thing--particularly the parents--the only
3236 thing that they cared about is how to get back to their
3237 families to look after their families so they were just
3238 listening to the time factor. "Okay. If I do this, do I get
3239 home quicker," or "If I do that."

3240 Particularly troubling was the waiver of the right to be
3241 indicted by a grand jury on felony charges. These were all
3242 felony charges. They basically at that point had no
3243 knowledge of the plea agreement or the plea offer that the
3244 government was going to make so they basically were given
3245 false hopes that, if they waived the right to a grand jury

3246 indictment, they would go home faster. So they did.

3247 Ms. LOFGREN. Let me ask you this. We had testimony
3248 that there were--the defense lawyers had been completely
3249 schooled on immigration law--and that there were immigration
3250 lawyers in the facility. Did you observe that?

3251 Mr. CAMAYD-FREIXAS. I am sorry. I didn't--

3252 Ms. LOFGREN. That the defense counsel had been
3253 instructed in immigration law and that there were immigration
3254 lawyers there at every stage helping the defendants
3255 understand. Did you see that?

3256 Mr. CAMAYD-FREIXAS. No. I didn't see any immigration
3257 attorneys there. There were actually very few attorneys each
3258 day because, even though 18 defense attorneys participated,
3259 they would come in 3, 4, 5 each day. And I didn't see any
3260 immigration attorney.

3261 I also understood that the official policy was that
3262 these were criminal cases, not immigration cases..

3263 Ms. LOFGREN. Right.

3264 Mr. CAMAYD-FREIXAS. --therefore--

3265 Ms. LOFGREN. But they had implications once you plead
3266 guilty to this crime. Even if you had another benefit
3267 available to you under existing immigration law, that would
3268 then be foreclosed.

3269 Mr. CAMAYD-FREIXAS. Well, I did observe that some
3270 attorneys were able to call on immigration law colleagues--

3271 Ms. LOFGREN. Okay.

3272 Mr. CAMAYD-FREIXAS. --but the issues were so
3273 complicated that sometimes they had to consult with two and
3274 three--

3275 Ms. LOFGREN. Right.

3276 Mr. CAMAYD-FREIXAS. --different lawyers, and they would
3277 get different indications.

3278 Ms. LOFGREN. Let me ask the two law professors, and I
3279 am going to read from the affidavit that was filed in support
3280 of the application for the search warrant, and it is point
3281 85. I will summarize. The first part isn't really that
3282 material.

3283 "A search was conducted by ICE agents in the Accurate
3284 Database"--which, as we know, is the private-sector
3285 database--it is highly accurate--"for the individuals' social
3286 security numbers listed in second quarter 2007 payroll
3287 reports. This search revealed that approximately 878 out of
3288 1,116, or 78.6 percent, of the social security numbers input
3289 into Accurate either did not appear to be associated with the
3290 person assigned to that social security number, or the number
3291 did not reveal any person associated with the number."

3292 What were hearing here from the government's own
3293 affidavit is that 78--well, let us say almost 79 percent of
3294 the individuals didn't have somebody else's social security
3295 number, they had a made-up number.

3296 How is that consistent, in your judgment, with the
3297 necessity to base a prosecution on evidence that the
3298 prosecutor's burden to have the elements of the crime known
3299 and present before proceeding with a prosecution. Could you
3300 comment briefly on that?

3301 Mr. LEOPOLD. Well, that statistic, Madam Chairwoman, is
3302 very troubling. Eighty percent of these people apparently
3303 did not have--the social security number didn't correspond to
3304 a real person. That draws into the real question, the whole
3305 use of the identity theft as a charge and really brings into
3306 question the social security charges.

3307 I tell you, I have sat on the CJA panel Northern
3308 District of Ohio now for 10 years that handles criminal cases
3309 in addition to my immigration practice. I would love an
3310 opportunity to cross-examine the affiant here about that
3311 because what he seems to say in this paragraph at the end is,
3312 "Well, this evidence didn't really add up, but so what. I am
3313 an expert. Believe me." So it is very troubling.

3314 Mr. RIGG. I concur with Mr. Leopold's analysis there.
3315 The two parts of that paragraph seem to be inconsistent, but,
3316 again, that is something that would have been submitted to a
3317 judge. But that is the type of information you would want a
3318 preliminary hearing on.

3319 Ms. LOFGREN. Well, if I may time is running out, but it
3320 just seems to me that the prosecutor's obligation is first to

3321 do justice, not to just to get convictions. It is to, as an
3322 officer of the court, to make sure that justice is done.
3323 That is the whole system. And if the elements of the crime,
3324 by the government's own attestation under oath, aren't there,
3325 how can the prosecutors, consistent with their ethical
3326 obligations, proceed? I just--I have a concern about that.

3327 My time has expired so I am going to turn to the ranking
3328 member for his 5 minutes of questions.

3329 Mr. KING. Thank you, Madam Chair.

3330 I am going to turn first to Dr. Camayd, and I don't see
3331 it in your written testimony, but what I think I heard you
3332 say was that the subjects of this raid endured cruel and
3333 unusual punishment. Did I hear that correctly?

3334 Mr. CAMAYD-FREIXAS. Yes, sir.

3335 Mr. KING. And I just can't help but reflect that the
3336 Supreme Court has conferred habeas rights on enemy combatants
3337 and also conferred Geneva Convention status to enemy
3338 combatants, and I have--I am looking at this as being
3339 precisely language from the Eighth Amendment of the
3340 Constitution, cruel and unusual punishment. Were you
3341 advocating that those defendants then would bring a case to
3342 have their constitutional rights protected?

3343 Mr. CAMAYD-FREIXAS. No, sir. I don't have an opinion
3344 about that.

3345 As an interpreter, part of my job is to interpret the

3346 meaning of what people are saying, not just the words. In
3347 order to do that, I have to put myself in the position of the
3348 individuals I am interpreting for, whether they are attorneys
3349 or witnesses or defendants. And when--I did that for 14
3350 hours during the jail interviews on a Friday and Sunday, and
3351 I was able to put myself in each individual situation, and I
3352 was talking specifically about the parents who were worried
3353 sick about their children--

3354 Mr. KING. Okay.

3355 Mr. CAMAYD-FREIXAS. --and their families and having to
3356 basically spend the next 5 months at every moment of their
3357 waking hours just consumed with this worry.

3358 Mr. KING. And--and I understand that was part of your
3359 earlier testimony, and I agree with you that a good
3360 interpreter interprets not just the words, but voice
3361 inflection, words unsaid, body language--all those things
3362 together. And I read the words in your testimony too and
3363 some of them are--they are inflammatory to me. And so I will
3364 just leave that there rather than belabor that point.

3365 And I would turn then--first, I wanted to make a little
3366 comment about Mr. Rigg's testimony.

3367 First, I think it is the most reasonable of the
3368 majority's witnesses here. And you made two points: One,
3369 that the compression of time imposed limits on attorneys that
3370 may have put the defendants' rights at risk. I think that is

3371 a valid point, and I don't know if it is--I don't necessarily
3372 agree or disagree with it. I just think it is a good point
3373 to have raised. Then the--you referred to as an ambush--I
3374 think a surprise--to the attorneys who were drawn into this
3375 process. That is how I interpreted it.

3376 I just wanted to say to you that, being on the Iowa
3377 Supreme Court Advisory Committee, I have a certain amount of
3378 envy that I am not on that advisory committee.

3379 So instead of asking you a question, I would just take a
3380 little license here, and in the time that is remaining, I
3381 really want to turn to Mrs. Costner and say I recognize how
3382 difficult this was for you to be here today. I appreciate
3383 the chairman's cooperation in that, and I know that you had
3384 to overcome a fair amount of intimidation just from the very
3385 fact of this being Congress to come here and testify, and I
3386 think the way that you went through your testimony and got to
3387 the end of it and actually compressed it within the 5
3388 minutes, I want to thank you. And I know there are members
3389 on both sides--the Democrats and Republicans--that know how
3390 difficult this was. And that is the way citizens serve this
3391 country. You have done that.

3392 But I would ask you, are you finished? Do you know that
3393 the identity theft is over, and how would you know if it was?

3394 Mrs. COSTNER. I was told that we would never know,
3395 that, unless we changed our names and social security

3396 numbers, that they would always be out there. And the IRS
3397 told me that we would get tax notices for 2006 and 2007. I
3398 just don't know when they will be here.

3399 Mr. KING. Do you know the initial perpetrator--do you
3400 know where he is now in the--in the legal process?

3401 Mrs. COSTNER. They let him go. They said that it was
3402 not illegal to use someone's name to obtain employment.

3403 Mr. KING. But he was he never ordered deported from the
3404 United States?

3405 Mrs. COSTNER. That is what the D.A. told us was going
3406 to happen when we left court, but then they--

3407 Mr. KING. But it didn't happen. And we are very--we
3408 are very familiar with those circumstances by which we are
3409 short of law enforcement personnel in a lot of ways, and I
3410 just say as a matter of--statistically--two of my staff
3411 people have been hit by drivers who were illegal, and in each
3412 case law enforcement took the information, took the
3413 Matricular Consular card number, they knew very well it
3414 wouldn't hit a positive hit on the database, turned them
3415 loose. And even though, when I send my chief of staff to
3416 town to try to get enforcement, we can't get it even in my
3417 own staff.

3418 So I just--I thank all the witnesses--I know we have
3419 strong emotional feelings, and as emotions come out in your
3420 testimony, Dr. Camayd, and I actually think some of that was

3421 | plenty. And I appreciate the professionalism that comes here
3422 | when it arrives, and I know how it was most difficult for
3423 | Mrs. Costner, and, again, I thank you for your testimony
3424 | especially.

3425 | Ms. LOFGREN. The gentleman's time has expired.

3426 | I would turn now to the gentleman from Illinois Mr.
3427 | Gutierrez.

3428 | Mr. GUTIERREZ. Thank you very much.

3429 | Let me share with Mrs. Costner thank you for coming and
3430 | bringing your testimony before this committee. I think it is
3431 | very valuable information and testimony for us. We need to
3432 | do more about identity theft, and I thank you for your
3433 | testimony. I think it will help us here. At least I am very
3434 | hopeful it will help us here.

3435 | Let me go to Mr. Camayd. We heard Ms. Costner's
3436 | testimony about identity theft. It sounds to me like the
3437 | gentleman who stole her identity committed aggravated
3438 | identity theft. Would that be your opinion?

3439 | Mr. CAMAYD-FREIXAS. Absolutely.

3440 | Mr. GUTIERREZ. And I just want to see how that relates
3441 | to your experience in being an interpreter and what the
3442 | people were charged. Was there any evidence of this kind of
3443 | critical criminal intent--as using someone's identity, social
3444 | security number--and causing the kind of harm that was caused
3445 | to Mrs. Costner and her husband?

3446 Mr. CAMAYD-FREIXAS. Well, I expressed to Mrs. Costner
3447 how sorry I was for what happened to her during the break.
3448 And I want her to know, for her peace of mind, that the
3449 individuals that I saw in this case in Iowa were just
3450 hard-working people and, in fact, only 5 out of 389--had any
3451 kind of criminal record.

3452 One of the issues that bothered me about the case in
3453 Iowa is that individual circumstances of each case were not
3454 considered. And I think that, when we look at the very
3455 unfortunate case of Mrs. Costner, as well as issues as to
3456 whether illegal workers are good or bad for the country, I
3457 think it--I keep going back to that situation and saying,
3458 "Well, how can we apply these broad issues to the individual
3459 cases if we don't know the facts of each case?"

3460 Mr. GUTIERREZ. And so of the people that you helped
3461 interpret for, there was no evidence--in your testimony you
3462 seem to really stress the difference between the aggravated
3463 identity theft and the use--the improper use of a social
3464 security card. Would you--what is the difference?

3465 Mr. CAMAYD-FREIXAS. Well, aggravated identity theft was
3466 a charge created by an act of Congress in 1998. For almost
3467 10 years, it had been used for its proper purpose and
3468 meaning. And it was only until the middle of 2007 that it
3469 began to be used in immigration cases, basically in
3470 presenting false documents to obtain employment. So it

3471 seemed like it was a way of testing the waters until in
3472 Postville it was applied on a large scale.

3473 But the Department of Justice Web site has a very good
3474 page on identity theft. It explains what it is. It gives
3475 several examples. The examples it gives pertain to people
3476 who have stolen identity to charge sometimes hundreds of
3477 thousands of dollars under somebody else's name, that type
3478 of--

3479 Mr. GUTIERREZ. --that is to use somebody's identity to
3480 commit a crime?

3481 Mr. CAMAYD-FREIXAS. That is correct.

3482 And also it remits you to the actual statute, and the
3483 language of the statute is that identity theft is using
3484 somebody else's identity to commit a crime under the false
3485 pretense of being another person.

3486 Mr. GUTIERREZ. Let me just follow up because I would
3487 like to ask Mr. Leopold.

3488 So when I read, "If you plead guilty to the charge of
3489 knowingly using a false social security number, the
3490 government will withdraw the heavier charge of aggravated
3491 identity theft"--and this is from the interpreted--this was
3492 the plea agreement, which the assistant general attorney had
3493 a little bit of problem but not much problem with. I mean,
3494 this is basically what the interpreters are saying, that the
3495 defense counsel was giving to their client.

3496 What is wrong with that? What in essence is there
3497 anything wrong with an attorney--with a U.S. attorney or the
3498 federal government accusing somebody of something and then
3499 offering them a lesser plea? What is wrong in this case?

3500 Mr. LEOPOLD. Well, what is wrong with it is is
3501 apparently there was very little evidence to convict them
3502 even on the lesser plea. And what they did was they
3503 compressed this whole situation by use of what is otherwise
3504 known as an exploding plea agreement, which was 7 days long
3505 or it ended. So that compressed timeframe, coupled with the
3506 fact that most of these people--or all of them--their real
3507 intent was really to get out and work and feed their families
3508 again, and their real--this whole situation banked on the
3509 fact that the workers really didn't understand the nature of
3510 the charges against them.

3511 What was wrong was to use that kind of leverage in this
3512 particular case and to try to criminalize--successfully
3513 criminalize as many undocumented workers as they did when, in
3514 fact, all they were trying to do was feed their families.

3515 Mr. GUTIERREZ. And one last question. If it is an
3516 immigration case, would you take any lawyer for a--is there a
3517 particular reason you want an immigration lawyer to deal with
3518 an immigration case?

3519 Mr. LEOPOLD. Well, look, absolutely, Congressman. The
3520 travesty here is that these pleas that were given could not

3521 possibly have been given knowingly because there was not
3522 adequate advice of immigration counsel. And in a criminal
3523 case involving a noncitizen, part and parcel of the defense
3524 is an analysis of the immigration consequences.

3525 In Dr. Camayd's essay, there was a discussion of a man
3526 from Guatemala, and as the chairwoman mentioned, Guatemala
3527 has a rather checkered history with human rights violations.
3528 Many of these farmers were from Guatemala. There were
3529 probably asylum claims in there. There were probably people
3530 that needed protection. All they needed to do--all the U.S.
3531 Attorney's Office needed to do and should have done and
3532 failed to do was ensure that immigration advice--competent,
3533 thorough immigration advice was available to all of these
3534 detainees.

3535 Ms. LOFGREN. The gentleman's time has expired.

3536 The gentleman from California, Mr. Lungren, is
3537 recognized.

3538 Mr. LUNGREN. Well, I am sorry I missed a good portion
3539 of this while I was tending to other things, but I guess I
3540 have been here long enough to see what the hearing is all
3541 about. ICE screwed up. Labor Department screwed up. U.S.
3542 Attorney's screwed up. Court screwed up. There is no
3543 criminality here. People like Mrs. Costner, who have their
3544 identity stolen and suffer the consequences, we apologize to
3545 you, but, you know, no one really did anything wrong here.

3546 | They just took your identity.

3547 | I have been in this place 14 out of the last 30 years
3548 | working on immigration issues. I thought that we solved this
3549 | problem in 1986 when we had the largest, most generous
3550 | legalization in the history of this country, which, by the
3551 | way, was not very particularized. There wasn't much you had
3552 | to prove to them and we managed to legalize millions of
3553 | people, but we did not enforce the law.

3554 | And people think the comments here about the federal
3555 | employees who worked on this are not going to deter them from
3556 | doing their job, I think they are sadly mistaken. We have
3557 | been told that they were cowboys, that they were rogues, that
3558 | they had no consideration for the rights of anybody. Now,
3559 | maybe that is true. Maybe this was wholesale. Maybe every
3560 | single ICE officer disrespected the rights of everybody else.
3561 | Maybe the U.S. Attorney's Office did it completely. Maybe
3562 | the Labor Department was involved in some sort of grand
3563 | conspiracy with Department of Homeland Security. But,
3564 | frankly, I find that a whole lot hard to swallow.

3565 | Ms. Costner, when your identity was lost and taken by
3566 | somebody else, were you concerned whether the person was
3567 | doing it for a reason they considered to be good? Would that
3568 | have made a difference in terms of the implications with you,
3569 | the impact on you?

3570 | Mrs. COSTNER. No. When I went to court with the lady,

3571 I actually was in a position to where I felt sorry for her,
3572 but I still owed \$8,000 and had lost a big part of my life.

3573 Mr. LUNGREN. This upside--

3574 Mrs. COSTNER. I mean, I am still--

3575 Mr. LUNGREN. Did this turn your life upside down?

3576 Mrs. COSTNER. Yes. And--

3577 Mr. LUNGREN. So it is not a victimless crime? I mean,
3578 you were a victim in this?

3579 Mrs. COSTNER. And will be the rest of my life.

3580 Mr. LUNGREN. But what we hear in Congress mostly is to
3581 blame the social security system because they didn't do a
3582 good enough job in it and because we don't check well enough.

3583 I mean, at some point in time, I hope people understand
3584 folks have to take responsibilities for their action. And it
3585 is illegal to come into this country when you don't have a
3586 basis for coming to this country. It is illegal to take a
3587 job when you don't have a right to have a job.

3588 And I will continue to talk about this until something
3589 is changed. We have an unbelievable crisis in this country,
3590 a scandal in this country with the unemployment among young
3591 African-Americans age 17 to 35. I dealt with it when I was
3592 attorney general. We were dealing with the high rate of
3593 incarceration of that group, and one of the concerns was
3594 where are the jobs? And I hope we will not forget about
3595 that. But I hear very little about that.

3596 And, you know, when you are trying to balance the scales
3597 of justice, we ought to treat people fairly, they ought to
3598 have the right to have a fair hearing, they ought to have the
3599 right to have lawyers, but let us also remember the other
3600 side of the balance here. There is people like Ms. Costner
3601 who--

3602 Mrs. COSTNER. Had to pay for my lawyers.

3603 Mr. LUNGREN. And your life has been turned upside down.

3604 Mrs. COSTNER. Yes. I mean, it is--

3605 Mr. LUNGREN. Now, maybe no one intended that, but that
3606 is what happens when people steal identity here, and it is
3607 almost as if we are saying--

3608 Ms. LOFGREN. Would the gentleman yield?

3609 Mr. LUNGREN. --it is not that big a deal.

3610 I will be happy to yield, but, I mean, I have sat here
3611 and heard questions while I was here.

3612 Ms. LOFGREN. I don't think you had arrived yet when all
3613 of us expressed concern about--

3614 Mrs. COSTNER. Correct.

3615 Ms. LOFGREN. --Mrs. Costner's--

3616 Mr. LUNGREN. Oh, I understand that.

3617 Ms. LOFGREN. --situation and also expressed the view
3618 that the perpetrator should have been prosecuted and
3619 deported.

3620 But here is--and I thank the gentleman for yielding--the

3621 affidavit filed by the government based on their search says
3622 that 80 percent of the individuals didn't take somebody's
3623 social security--it was a number that--it wasn't somebody's
3624 social security number. It was a made-up number not attached
3625 to any real person. And I think that is one of the issues
3626 that at least is of concern here is there was no victim
3627 because there was nobody who had the number.

3628 And I thank the gentleman for yielding.

3629 Mr. LUNGREN. I appreciate that.

3630 You know, we have a schizophrenic country. On the one
3631 hand, we want to deal with illegal immigration and enforce
3632 the law. On the other hand, we want to have people here to
3633 take jobs that "Americans won't take." And I think there is
3634 an area in which that applies, and that is why I have been
3635 working for 30 years to get a temporary worker program and to
3636 get some legal means to do it.

3637 It is my observation the American people will not allow
3638 us to do that until they believe we have the enforcement side
3639 in control. And when they see the impact of phony social
3640 security cards or stolen identity, that does not give them
3641 great confidence that we have this under control. And my
3642 fear is that we will never get to the point of having that
3643 temporary worker program, having those means by which we can
3644 determine how many people should come here, take them out of
3645 the shadows of illegality so they have the protections of the

3646 law unless we take enforcement seriously.

3647 And my bottom-line concern is that the hearing seemed to
3648 be directed at an agency that screwed up. And I suppose we
3649 might find a raid where they actually did things right. And
3650 maybe we--

3651 Ms. LOFGREN. We will keep looking.

3652 Mr. LUNGREN. Well, I know. We will keep looking, but
3653 that is very encouraging to the people at ICE as we have been
3654 told that we have great respect for them and the work they do
3655 and then we just constantly tell them they have done a
3656 terrible job.

3657 If I sound frustrated, I am frustrated because I have
3658 worked for 30 years to try and get a solution here, and one
3659 of the results of not having a solution is Ms. Costner, is
3660 what you had to go through, and unless we get a grip on this,
3661 many others are going to go through that. And we are all
3662 going to invite you here, and we are all going to apologize
3663 to you, say we are sorry it happened to you--

3664 Mrs. COSTNER. Pass around the hat.

3665 Mr. LUNGREN. Yes, we will pass around the hat. But we
3666 won't do anything about it. So I will add my apology too,
3667 but the best apology we could make to you is when we actually
3668 pass a law that deals with this and puts it on the right
3669 track.

3670 Thank you very much.

3671 Ms. LOFGREN. The gentleman's time has expired.
3672 I recognize the gentlelady from Texas Ms. Jackson Lee.
3673 Ms. JACKSON LEE. Thank you, Madam Chairwoman, again.
3674 I associate myself with the latter words of my good
3675 friend from California. We do have to pass a law, Ms.
3676 Costner, and I would start with you simply to say that I am
3677 outraged about what happened to you. As I looked over your
3678 very eloquent statement, this is, I think, the thrust of my
3679 comments. I want the bad guys, the ones who are stalking
3680 you, who are criminally calling you up on the phone and
3681 ridiculing you. I want the guy who speeded and got a
3682 speeding ticket to be deported. And the outrage is where
3683 was--why was there a disconnect? The local law enforcement
3684 could have taken the gentleman in and called the federal law
3685 enforcement right there. That is the kind of criminal bad
3686 guy that you want to be gone. Obviously, we would like a lot
3687 of these incidences to not occur.

3688 So my question, I know that you are not an expert in
3689 federal law--and I see this other individual who you felt
3690 sympathy for--but there was a purposeful use of your
3691 identification, and I don't want to stereotype a profile, but
3692 I would think your name is slightly different. Maybe they
3693 perceived you to be--this individual to certainly have the
3694 ability to have maybe a name as yours. But it might have
3695 been an indicator to ask a few more questions.

3696 And so I think obviously and conspicuously on the face
3697 of your facts we could have helped you. And I apologize for
3698 the lack of coordination. We have advocated that there
3699 should be coordination. We don't think local law enforcement
3700 or federal law enforcement. But if this person was poised to
3701 be deported for conspicuous, reckless criminal actions--I am
3702 talking about the first individual, who seemingly began to
3703 stalk you--that should have occurred.

3704 And I just simply ask you the question would you like to
3705 see, as we look to try to fix this immigration system, that
3706 our law enforcement goes after those who are poised or are
3707 already in the act of criminal acts that already violate the
3708 criminal laws? If you were doing this, that would be against
3709 the law. Should we be putting resources there to get those
3710 kind of people?

3711 Mrs. COSTNER. Yes. But I would like to see them here
3712 going through the channels to be here legally so it is not a
3713 question and they don't have to steal an identity to work to
3714 feed their families.

3715 Ms. JACKSON LEE. Well, you are very gracious, and I
3716 just want to apologize to you and thank you for your
3717 testimony--

3718 Mrs. COSTNER. Thank you.

3719 Ms. JACKSON LEE. --and for being here, and we will
3720 certainly look at some of the fractures in the system that

3721 caused this individual--the first individual that took your
3722 husband's ID, of course--to treat you in that manner, and I
3723 thank you for your testimony.

3724 Let me go to Mr. Leopold. I went down this line of
3725 reasoning with the representative for the DOJ and the ICE,
3726 which is to suggest that there may have been some thinking as
3727 relates to putting forward these criminal charges knowing
3728 that criminal charges placed on individuals who, as you had
3729 indicated, come from places like Guatemala may have been
3730 simply farmers who were trying to come here for economic
3731 opportunity, albeit that they were undocumented, that placing
3732 them in this criminal predicament--in this criminal charge
3733 predicament would have then cast them as felons and made
3734 their journey back home more difficult or their journey and
3735 their ability to return more difficult.

3736 What do you think about that kind of thinking?

3737 Mr. LEOPOLD. Well, the criminalization of undocumented
3738 farmers really goes nowhere. Yes, it does brand them as
3739 felons. And you are correct, once somebody is branded as a
3740 felon, it creates all kinds of problems later on with respect
3741 to admissibility to the United States. Not everybody who is
3742 deportable who is a felon, but many are. Many people who are
3743 felons, it is impossible to be admitted. There is no 10-year
3744 bar. I think I heard the representative from the Department
3745 of Justice talk about a 10-year limit. I don't know of any

3746 10-year limit. It is a lifetime limit.

3747 Ms. JACKSON LEE. It is a lifetime.

3748 Mr. LEOPOLD. It is a lifetime limit.

3749 Ms. JACKSON LEE. That is right.

3750 Mr. LEOPOLD. You are correct. And absent a waiver--and
3751 even then, you have to show a qualifying relative--it becomes
3752 extremely, extremely complicated.

3753 Ms. JACKSON LEE. I don't want to cut you off, but my
3754 time, and I would like the other three gentlemen.

3755 I don't want us to get tainted as unpatriotic because we
3756 are arguing for a sense of balance, but I need some help. I
3757 know that you have been engaged in this. The use of
3758 resources used like this raid, help me find a more effective
3759 pathway. I have looked at the numbers: 104 raid teams and
3760 we look to get 4,000 in 2008, immigration lawyers being
3761 utilized, other resources. Is this an effective tool for
3762 enforcing immigration laws or putting the system right-side
3763 up?

3764 You want to start Mr. Rigg?

3765 Mr. RIGG. Thank you. I don't think it is the most
3766 effective tool. You can make an argument that, yes, we
3767 achieved what we set out to do if you are ICE if we removed
3768 individuals who were undocumented, we are getting them out of
3769 the country, we have now prosecuted them, and you can claim
3770 some success with that.

3771 Was the overall process a fair one? That is where I
3772 have real problems. And the purpose of the criminal justice
3773 system is to make sure that we get at the truth and that
3774 justice is in fact done. And critical resources have to be
3775 devoted, not only to ICE and to the Department of Justice,
3776 and they also have to be devoted to the Judiciary and the
3777 Criminal Defense Bar, and everybody seems to overlook the
3778 Criminal Defense Bar and give them, I think, the opportunity
3779 to have some input into this and maybe make suggestions that
3780 might actually serve ICE's purpose better.

3781 Ms. JACKSON LEE. Mr. Leopold, could you quickly just
3782 answer the effective use of resources?

3783 Mr. LEOPOLD. The most effective use of resources,
3784 Congresswoman, would be to fix the broken immigration system.

3785 As Congressman Lungren pointed out, it is broken, and it
3786 does need to be fixed. And this is a symptom, the terrible
3787 story that we hear from Mrs. Costner, other stories. This is
3788 the symptom of a broken--badly broken immigration system.
3789 And, frankly, Congress needs to roll up its sleeves, get down
3790 to the nitty gritty of fixing the system. It is not going to
3791 happen overnight, and it is going to take a lot of hard work.

3792 And, frankly, I implore Congress to do this about it.

3793 Ms. LOFGREN. The gentlelady's time has expired.

3794 Ms. JACKSON LEE. I thank the distinguished chairwoman,
3795 and I will just say, Chairwoman, in closing my sentence, I

3796 | think we need to ask the president of the United States,
3797 | which has to be a partner in signing a bill, and I personally
3798 | ask him if he would take in these waning months leadership on
3799 | helping turn this system right-side up.

3800 | I yield back.

3801 | Thank you.

3802 | Ms. LOFGREN. Thank you.

3803 | The gentlelady from California Ms. Sanchez is recognized
3804 | for 5 minutes.

3805 | Ms. SANCHEZ. Thank you to the chairwoman for holding
3806 | this hearing because I think, although it has been a long
3807 | day, it highlights several issues that I think speak to the
3808 | fundamental nature of what are we as a democracy.

3809 | And while I don't want to diminish the terrible
3810 | circumstances that Ms. Costner's gone through, in listening
3811 | to--in reading through some of the testimony, it is clear
3812 | that the workers who were using social security numbers that
3813 | were not assigned to another individual, their intent was not
3814 | to wipe out somebody's bank account, charge up thousands of
3815 | dollars on their credit cards or steal their pension, it was
3816 | simply to work.

3817 | And I think in all the panels we have heard at some
3818 | point or another people say we need to fix a broken
3819 | immigration system; otherwise, these types of things are
3820 | going to continue to occur. And there will be criminals,

3821 | like the criminal who stole Ms. Costner's identification, who
3822 | will go unpunished. But there will also be hard-working
3823 | people who are just trying to feed their families or trying
3824 | to make a better life for themselves or escape repressive
3825 | regimes in their home countries of origin who are also going
3826 | to get caught up in unfortunate circumstances because I
3827 | consider some of their circumstances very unfortunate as
3828 | well.

3829 | What particularly concerns me about this raid is the
3830 | question of due process rights, and much has been made about
3831 | the fact that the taxpayers pay for it. Well, you now what?
3832 | It is a constitutional guarantee that, if you cannot afford
3833 | an attorney and you are being charged with a crime in this
3834 | country, one is provided for you. And yet, you know, people
3835 | seem to make light of the fact that, hey, as long as you are
3836 | given an attorney, what are you complaining about? Well, if
3837 | you don't have a reasonable way to participate in your own
3838 | defense, if you don't have a understanding, a basic grasp of
3839 | what you are being charged with, how can you really make
3840 | informed decisions in a criminal process? And the compressed
3841 | timeframe, I think, only underscores the egregiousness of the
3842 | due process that was not afforded to many of these--many of
3843 | these workers.

3844 | In my Subcommittee on Commercial and Administrative Law,
3845 | we have heard testimony under Operation Streamline and in

3846 Postville defense lawyers were being assigned up to a dozen
3847 clients at once and given less 30 minutes to, number one,
3848 meet and educate the client themselves; number two, decide
3849 whether the client was competent to stand trial; number
3850 three, determine whether there is a defense of citizenship or
3851 duress, a lack of intent or a need for pretrial motions to
3852 suppress evidence or statements due to constitutional
3853 violations; and, number four, learn personal information
3854 which might mitigate a sentence and a whole host of other
3855 things. Thirty minutes was granted to each of these people.

3856 I want to ask Mr. Leopold and Mr. Rigg, in your
3857 professional opinion, can any defense attorney adequately and
3858 ethically execute their duties in less than 30 minutes to a
3859 client, and especially in a case where they have to interpret
3860 with somebody who doesn't speak the language? Does 30
3861 minutes seem like a sufficient amount of time?

3862 Mr. LEOPOLD. Well, you know, I can speak from
3863 experience as a CJA panel attorney myself that 30 minutes is
3864 enough time to shake the client's hand and get to know their
3865 name. Of course, not, Congresswoman. Of course, not.

3866 You know, and couple that with this compressed plea
3867 agreement--and by the way, I don't know--nobody has ever
3868 explained the representative from the Department of Justice
3869 or the U.S. attorney--nobody has ever explained why did they
3870 have to impose this 7-day deadline on the plea agreement?

3871 Why?

3872 There was absolutely no reason to do that other than to
3873 pressurize, not only the panel attorneys--the CJA panel
3874 attorneys--who, by the way, did a valiant job out there in
3875 Iowa--but to pressurize the clients into taking these pleas.
3876 I know of no situation in my experience--and I have asked
3877 other attorneys--where this type of plea agreement was used.

3878 Ms. SANCHEZ. Mr. Rigg?

3879 Mr. RIGG. I am also the director of the Criminal
3880 Defense Program, and one of the things I do is I supervise
3881 students in criminal cases. I would fail any student who
3882 took 30 minutes to advise a client on a misdemeanor charge to
3883 plead or not to plead, much less do the analysis that you
3884 have described. Essentially what you have described is a
3885 violation of every standard of the ABA standards of a
3886 prosecution function and defense function.

3887 Ms. SANCHEZ. Thank you. I appreciate your honest
3888 answers to that.

3889 Mr. Camayd--did I pronounce that correctly?

3890 Mr. CAMAYD-FREIXAS. Camayd.

3891 Ms. SANCHEZ. Camayd.

3892 To the best of your knowledge, did any individual who
3893 you interpreted for refuse to answer questions during ICE's
3894 processing?

3895 Mr. CAMAYD-FREIXAS. I was not present during that

3896 questioning session so I wouldn't be able to answer that.

3897 Ms. SANCHEZ. Okay. So you don't know if any during
3898 processing asked for an attorney at that point either?

3899 Mr. CAMAYD-FREIXAS. I am sorry?

3900 Ms. SANCHEZ. If any individual during the processing
3901 asked for an attorney?

3902 Mr. CAMAYD-FREIXAS. I do not know that.

3903 Ms. SANCHEZ. Okay.

3904 I just want to ask one final question, and I would beg
3905 the chair's indulgence as I did not get a chance to question
3906 any of the previous panels.

3907 Clearly, there seems to be a problem with this
3908 particular instance in terms of whether people had a knowing
3909 and a full understanding of what they were doing before they
3910 entered their plea agreements.

3911 I want to know from our panelists--Mr. Leopold and Mr.
3912 Rigg--what is the potential harm to the American system of
3913 justice when we allow criminal prosecutions to go forward in
3914 this manner? I mean, if it can happen here, can there not be
3915 other instances in which it can happen? And then what does
3916 that do fundamentally to the American system of justice?

3917 Mr. LEOPOLD. Well, Congresswoman Sanchez, if you could
3918 imagine for a second how we would react if we heard of a
3919 group of Americans overseas in a foreign country being
3920 rounded up into a cattle pen and prosecuted in 7 days. I

3921 mean, the whole spectacle itself demeans our system of
3922 justice and stands as a stain upon this system which we
3923 all--we all cherish.

3924 These types of precedents in terms of the type of
3925 prosecution as it was done out there is a terrible precedent,
3926 a terrible way to handle justice, and I would respectfully
3927 submit that it shouldn't ever happen again.

3928 Ms. SANCHEZ. Thank you.

3929 Mr. Rigg?

3930 Mr. RIGG. I think anytime you value high turnover and
3931 economy of justice, that is exactly what you get, that you
3932 don't get justice, and you probably are going to violate due
3933 process in doing so. And anytime the American system--and
3934 every day the American system is put on trial, and are we
3935 getting it right, and it is rightfully tested by the careful
3936 arguments between defense counsel and prosecutors with a
3937 neutral and detached judge. And when you take any part of
3938 that component away, you are guaranteeing at some level you
3939 are going to create a problem.

3940 Ms. SANCHEZ. All right. One final question, and I
3941 can't resist asking this because Mr. Leopold said, "If you
3942 could imagine this happening to Americans overseas."

3943 What if U.S. citizens here in the United States--here in
3944 the United States were rounded up and arraigned 10 at a time
3945 and processed and given plea agreements? What can you

3946 | imagine would happen here if American citizens were treated
3947 | like that under our system of justice?

3948 | Mr. LEOPOLD. Well--

3949 | Ms. SANCHEZ. Because it seems to me that there is an
3950 | inherent bias if they say, "Well, it is fine because, you
3951 | know what? These people don't matter anyway. They don't
3952 | really count."

3953 | Mr. LEOPOLD. Well, I think that is an astute point. I
3954 | think that we wouldn't see that kind of roundup of U.S.
3955 | citizens.

3956 | You know, in the panel cases that I have done in the
3957 | Northern District of Ohio involving big cases with a lot of
3958 | defendants, it is always one lawyer to one client. I have
3959 | never seen 17 clients to one lawyer, 15 minutes or 30 minutes
3960 | to speak to the client.

3961 | You know, in this case--this is the immigration law,
3962 | this huge book. I don't know how you can explain this in 30
3963 | minutes to somebody, let alone the enormous consequences of
3964 | taking a plea.

3965 | Ms. SANCHEZ. Any further comment from any other
3966 | panelists on that?

3967 | Ms. LOFGREN. The gentlelady is granted one additional
3968 | minute for an answer--

3969 | Ms. SANCHEZ. Thank you.

3970 | Ms. LOFGREN. --and then we will be--

3971 Ms. SANCHEZ. I will yield--

3972 Ms. LOFGREN. --adjourning the hearing.

3973 Mr. CAMAYD-FREIXAS. Yes. I want to make clear that I
3974 believe everybody here is in favor of enforcement but done
3975 the right way. The consequences of not doing it the right
3976 way, we don't have to look too far to find them, and Mrs.
3977 Costner's case is a case in point.

3978 Related to this case, I heard of situations in which the
3979 authorities were called about an individual similar to in the
3980 case of Ms. Costner's, and they are response was, "You have
3981 only one guy?" They said, "No. We can't take care of it."
3982 In this case, obviously, there were 700 warrants so this is
3983 what attracted the attention of law enforcement.

3984 I also wanted to point out that I want to dispel the
3985 myth that the target was the employer. As a matter of fact,
3986 one of the three charges, which was very much related to the
3987 social security fraud charge, was use or possession of false
3988 identity document with intent to deceive. Now, that phrase
3989 "with intent to deceive" isn't really with intent to deceive
3990 the employer. So that held the employer harmless. Not only
3991 that, but that made it a crime of moral turpitude, which
3992 renders the convict ineligible to even apply for immigration
3993 relief.

3994 Ms. SANCHEZ. Thank you.

3995 I will just--before I yield back my time--will make one